

PAULINE G. THORNTON

IBLA 74-269

Decided September 23, 1974

Appeal from a decision by the Nevada State Office, Bureau of Land Management, denying reinstatement of oil and gas lease Nev-064918-AB, terminated by operation of law for failure to pay the advance rental on or prior to the due date.

Affirmed.

1. Oil and Gas Leases: Reinstatement--Oil and Gas Leases: Rentals

An oil and gas lease terminated by operation of law for failure to pay the advance rental timely can be reinstated only when the lessee shows that his failure to pay the rental on or prior to the anniversary date of the lease was either justifiable or not due to a lack of reasonable diligence.

2. Oil and Gas Leases: Reinstatement--Oil and Gas Leases: Rentals

Failure to timely pay the advance rental due on an oil and gas lease will be deemed "justifiable" only where the failure is the result of sufficiently extenuating circumstances which affected the lessee's actions.

APPEARANCES: Pauline G. Thornton, pro se.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

Pauline G. Thornton appeals from a decision of the Nevada State Office, Bureau of Land Management (BLM), dated March 20, 1974, denying her petition for reinstatement of oil and gas lease Nev-064918-AB,

a nonproducing lease which terminated by operation of law pursuant to 30 U.S.C. § 188(b) (1970), for failure to make timely payment of the annual rental, due January 2, 1974. 1/

The record shows that an envelope containing a postal money order sent by appellant was postmarked January 9, 1974, and received by the State Office on January 14, 1974. 2/ The money order was dated December 27, 1973. On the face of the money order appellant entered her own name as payee and that of the BLM as purchaser. The money order was returned to her with a notice pointing out the error. Appellant submitted a corrected money order received on January 25, 1974, and on January 31, 1974, the State Office issued a Notice of Termination of the lease.

Appellant attributes the delay in payment and her error in filling out the first money order to the fact that late in December 1973 she underwent a treatment where the pupils of her eyes were dilated and consequently she had difficulty with her vision for several days thereafter. She states that she was unable to "drive in order to obtain the money order in time so that it could reach your office \* \* \*."

[1] Section 31(b) of the Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 188(b) (1970), provides that a nonproducing oil and gas lease will terminate if the annual rental has not been received on or before the anniversary date of the lease. The lease may be reinstated only if the full amount owed has been paid or tendered within 20 days after the anniversary date (30 U.S.C. § 188(c)(1970)) 3/, and if it has been shown to the satisfaction of the Secretary that the failure to make timely payment "was either justifiable or not due to a lack of reasonable diligence on the part of the lessee \* \* \*." A Departmental regulation says that:

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1/ The anniversary date of the lease, upon which payment would normally fall due, was January 1, 1974. Since January 1 is a holiday, the due date of the lease payment was postponed to the next official working day, in this case January 2. 30 U.S.C. § 188(b)(1970); 43 CFR 1821.2-2(e), 3108.2-1(a).

2/ The State Office's decision erroneously stated that the first money order was received on January 3, 1974. That date was in error. The envelope in the record clearly shows that it was stamped as received in that office on January 14, 1974, and postmarked on January 9.

3/ For the purpose of this decision it is unnecessary to decide whether submission of appellant's first money order could in any way be construed a tender of the payment within the 20-day period required for reinstatement of a lease, since we find other requisites for reinstatement are lacking here.

\* \* \* [r]easonable diligence normally requires sending or delivering payments sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the payment \* \* \*.

43 CFR 3108.2-1(c)(2).

It is clear that in mailing a lease payment seven days after the date upon which it was due appellant failed to exercise "reasonable diligence." It remains to be determined whether appellant has established that her delay in making payment was "justifiable."

[2] A failure to exercise reasonable diligence in payment of rental is "justifiable" when caused by a factor which is ordinarily outside of the control of the lessee, such as an earthquake, flood or other natural disaster, or the death or illness of the lessee or of a member of his immediate family, occurring in close proximity to the anniversary date of the lease. Sufficiently extenuating circumstances must be present so as to affect the lessee's actions. Louis Samuel, 8 IBLA 268, 274 (1972); see John Rusiniak, 10 IBLA 74 (1973); R. G. Price, 8 IBLA 290 (1972).

We are sympathetic with appellant's circumstances and it appears that her eyesight difficulty may very well have caused the error on her first money order, which was made out on December 27, 1973, a date in close proximity to the anniversary date of the lease. Her eye problems, however, did not prevent her from making the trip to the post office on that day, to purchase the money order. What appellant has failed to explain satisfactorily is why, after having purchased a money order in payment of her advance rental in time to have mailed it so that in all probability it would have been received by the State Office on or before the due date, she waited nearly two weeks, until January 9, 1974, before placing it in the mails. She has also failed to show that the dilation treatment could not have been anticipated and payment made prior to the treatment. Cf. Vern H. Bolinder, 17 IBLA 9 (1974). In any event, we find that appellant has not shown that her delay in making timely payment of her advance rental was "justifiable" as contemplated by the statute and the regulations.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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Joan B. Thompson  
Administrative Judge

We concur:

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Edward W. Stuebing  
Administrative Judge

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Martin Ritvo  
Administrative Judge

